

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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**OUT-OF-AGENCY AGREEMENTS/CONTRACTS FOR SERVICE
GOVERNMENT CODE SECTION 56133
ADMINISTRATIVE GUIDELINES**

BACKGROUND

Beginning January 1, 1994 the Local Agency Formation Commission was charged with the responsibility for reviewing and taking action on a City or District contract to extend service outside its jurisdiction. As a part of the major review of LAFCO law, Government Code Section 56133 has been amended by enactment of AB 2838. This amended code section reads, in its entirety, as follows:

- "(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.*
- (b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.*
- (c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:*
 - (1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.*
 - (2) The commission has notified any alternate service providers, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and statement of its service capabilities with the commission.*
- (d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional*

boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requestor, specifying those parts of the request which are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions, the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

- (e) *This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section shall not apply to an extended service that a city or district was providing on January 1, 1994. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services, which do not involve the acquisition, construction or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries."*

(Amended January 1, 2001, Stats. 2000, Chapter 761)

As identified above, there are three instances when such contracts are not subject to LAFCO review and approval prior to contracting for service:

1. It does not apply to contracts between two or more public agencies where the service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level

of service to be provided is consistent with the level of service contemplated by the existing service provider.

2. It does not apply to contracts for the transfer of non-potable or non-treated water.
3. It does not apply to contracts solely involving the provision of surplus water to agricultural lands for projects that serve conservation purposes or that directly support agricultural industries. However, if the surplus water would support or induce development, the city or district would have to obtain approval from the commission prior to extending the service.

With these specific exceptions, the provisions of Code Section 56133 are quite specific in that all the agencies serving within San Bernardino County are precluded from providing their services outside their boundaries without first receiving written approval of the Commission.

IMPLEMENTING POLICIES

LAFCO has adopted policy declarations, which affect the implementation of its obligations under Section 56133. They are:

1. **DEFINITIONS:**

The definition of terms that follows has been developed to assist in the implementation of Section 56133 since its terminology, in some areas, is not reflective of current statutory definitions or has no statutory definition within Cortese-Knox-Hertzberg:

a. "New or extended services":

shall mean for Cities the provision of those services authorized to a city under its enabling legislation, and for Special Districts service shall remain as defined in Govt. Code Section 56074. It should be pointed out that a District would be precluded from providing a "new service" unless it has been first authorized that service under existing special district regulations regarding activation of latent powers.

b. "Contract or agreement":

shall mean a contract, agreement, will-serve letter, or other legal instrument, which requires or agrees to the delivery of service to property.

c. "Written approval of the Commission":

shall mean for development related contracts, the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-development related contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract.

d. "Affected County":

shall be defined in the same manner as Govt. Code Section 56012 but relating to the area to which contractual service will be delivered.

e. "Anticipation of a later change of organization":

The inclusion of the area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.

f. "Public Agency":

shall be defined in compliance with Govt. Code Section 56070. The statutory definition of Public Agency is "the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision".

The definition of public agency does not include a private or mutual water company. Any contract by a city or district to extend service to these types of service companies would require approval from the Commission prior to contract execution.

g. "Health and safety emergency concern":

shall mean the extension of service to alleviate an immediate health and/or safety problem. Such connections would be limited to existing dwelling unit(s) to provide for the provision of water or sewer service, or the connection to a mutual or private water system requiring auxiliary service.

2. **OPERATING POLICIES:**

At the December 20, 2000 hearing the Commission adopted the following policy:

The Commission has determined that the Executive Officer shall have the authority to approve or conditionally approve proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern. In addition, the Executive Officer shall have the authority to approve or conditionally approve service extensions where the services in question will not facilitate development (for example, an inter-agency contract for fire protection services). In cases where the Executive Officer recommends denial of a proposed service extension that proposal shall be placed on the next agenda for which notice can be provided. After the public hearing, the Commission may approve, conditionally approve or deny the contract." (Adopted December 20, 2000)

The second operating policy relates to the acquisition of a private water system by a public jurisdiction. This acquisition would require the city or district to continue the service and allow additional connections to the infrastructure without regard to the question of spheres of influence. In order to address this concern and provide a framework for the agency's continuing obligations, LAFCO has adopted the following policy:

"In the case where a city or district has acquired the system of a private or mutual water company prior to the enactment of this legislation, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or mutual water company defined by the Public Utilities Commission or other appropriate agency, at the time of acquisition without LAFCO review or approval as outlined in Govt. Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at the time.

Proposals to extend service outside this previously defined certificated area would come under the provisions of Govt. Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service."

In order for cities and districts to utilize this special policy it requires that they provide the LAFCO staff with documentation of the certificated service area of the system acquired. This documentation will be maintained on file by LAFCO for future reference.

APPLICATION PROCEDURES

Unlike the normal initiation process for proposals for jurisdictional change, Government Code Section 56133 provides that only a city or district may request LAFCO review of an out-of-agency contract.

Government Code Section 56133 gives LAFCO the authority to review and approve, approve with conditions, or deny these contracts. For all development-related applications for service contracts, the item will be considered by the Commission at a noticed public hearing. Nondevelopment-related contracts will be considered by the LAFCO Executive Officer, not the Commission, pursuant to policies adopted on December 20, 2000.

1. Filing for Review:

The filing requirements for review of an out-of-agency service contract/ agreement shall consist of:

- a. A written request from the Agency proposing to serve outside its boundaries for the Commission to consider the contract. This written request must be signed by the City Manager/District Manager indicating City Council or District Board support for the contract.
- b. Payment of appropriate filing fees;
 - (1) The LAFCO Fee Schedule includes a \$2,000 fee for the review of development-related contracts involving development of subdivisions/tracts as defined by the Subdivision Map Act (five or more units). There is a \$250 per connection fee for contracts involving the development of units requiring only a tract map as defined by the Subdivision Map Act (up to four units). These types of applications are also subject to the \$450 environmental review deposit fee.
 - (2) The LAFCO Fee Schedule includes a \$250 fee for the administrative review of nondevelopment-related contracts.
- c. A completed application form including the submission of a copy of the proposed agreement/contract; a plan for providing the service to the property; and maps showing the location of the property to be served, existing agency boundaries and the location of infrastructure to be extended.

(An application form is included as an attachment to these guidelines.)

- d. Any other information deemed appropriate by the Executive Officer in order to review the individual contract based upon its special circumstances.
2. The review of a service extension agreement/contract request will be subject to the review procedures defined in the California Environmental Quality Act (CEQA) and the San Bernardino LAFCO CEQA Guidelines. LAFCO shall operate as a "responsible agency" for the contract only if during the environmental processing LAFCO staff has been afforded an opportunity to evaluate the Initial Study during the public review period. Absent such environmental review, LAFCO will be the lead agency for further environmental processing. Completion of the environmental review process is required prior to action on the contract.
3. The Executive Officer shall determine, within 30 days of contract submission, whether or not the application is complete. If incomplete, the applying agency will be notified of the specific insufficiencies.

REVIEW PROCEDURES

1. Development-related Contracts: Contracts that are related to the development of tracts, subdivisions, or other types of projects will require the following review:
 - a. The City or District proposing to provide the service outside its boundaries shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration. Within 30 days, the LAFCO Executive Officer shall notify the entity whether or not the application filing is complete.
 - b. The LAFCO staff shall forward the application for service extension to the Commission's environmental consultant for review. If an environmental determination has not been made related to the development application, the Commission shall be the lead agency and prepare the appropriate documentation. If an environmental determination has been made, and LAFCO has been afforded an opportunity to comment, the Commission will act as a responsible agency. Completion of the CEQA review process will be required prior to placement on the Commission's agenda.
 - c. The LAFCO staff shall forward a copy of the application to various County Departments for their review and comments. A meeting of the various departments may be held dependent upon the circumstances of the contract. The determination of whether or not to hold the meeting shall be made by the LAFCO Executive Officer.
 - d. Once these required elements have been completed, the item will be placed on a Commission Agenda. At a noticed public hearing, the Commission will consider the staff's presentation, presentations by interested and affected parties, and make a determination.
 - e. The Commission has the authority to approve, approve with conditions, or deny the request for out-of-agency service extension. The Commission's determination and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.
2. Nondevelopment-related contracts (Administrative Review by LAFCO Executive Officer): Contracts that are related to providing service to an existing dwelling unit, commercial building, etc. or those contracts between public agencies for such items as fire protection mutual aid, etc. will be processed as follows:

- a. Prior to the execution of an agreement/contract for service outside their boundaries, the City or District proposing to provide the service shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration.
- b. Completion of the CEQA review process will be required prior to action by the Executive Officer. If there has been no environmental determination made by the agency, LAFCO will be the lead agency and provide the required environmental assessment. Such a determination will be required prior to authorization of the service extension.
- c. The Executive Officer's administrative review will include the following determinations:
 - 1. The proposed service extension is either nondevelopment-related and/or involves health and safety concerns as defined by Commission policy.
 - 2. The area to be served is within the sphere of influence of the agency requesting to provide service outside its boundaries.
 - 3. The environmental assessment has been completed. .
- d. The Executive Officer can approve, approve with conditions, or deny the request for service extension. If the Executive Officer's recommendation is denial, that determination will be placed on the next available Commission agenda for which notice can be provided.